

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

BEFORE THE HONORABLE CHARLES R. BREYER

| | | |
|---------------------------|---|---------------------------|
| UNITED STATES OF AMERICA, |) | |
| |) | |
| Plaintiff, |) | |
| vs. |) | No. CR 18-0081 CRB |
| |) | |
| STEVEN BROWN, |) | |
| |) | San Francisco, California |
| Defendant. |) | Friday |
| |) | November 22, 2019 |
| |) | 11:00 a.m. |

TRANSCRIPT OF PROCEEDINGS

APPEARANCES:

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Also Present: JOSEPH L. SCHATZ, ESQ.

Reported By: Debra L. Pas, CSR 11916, CRR, RMR, RPR

Official Reporter - US District Court

Computerized Transcription By Eclipse

Friday - November 22, 2019

11:16 a.m.

P R O C E E D I N G S

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THE CLERK: Calling Criminal Action CR 18-0081, USA
versus Steven Brown.

MS. CADET: Good morning, Your Honor. Chinyahi Cadet
for the United States.

MR. RAPPAPORT: Good morning, Your Honor. Douglas
Rappaport.

MS. SHERIDAN: Joanna Sheridan on behalf of
Mr. Brown, who is approaching the podium, Your Honor.

(Defendant present, out of custody.)

PROBATION OFFICER: Good morning, Your Honor. Brian
Casai from Probation, standing in for Jill Spitalieri.

THE COURT: This is essentially a continuation of a
sentencing; that we had an early proceeding, but we didn't
proceed with sentencing at that time because of the Court's
concern about whether the allegations that the loss was greater
than that which was found in the Presentence Report.

And the parties have filed a stipulation, which the Court
has reviewed, which seems satisfactory, stating to the effect
that this amount, the added amount, is not relevant conduct and
should not be considered by the Court in terms of the loss
calculation.

MS. CADET: Yes, Your Honor.

1 **THE COURT:** It doesn't render that information
2 irrelevant because of the 3553(a) factors, but it does -- it
3 does inform the Court's judgment as to what the appropriate
4 Sentencing Guideline range is.

5 The Presentence Report finds an Offense Level of 16, a
6 Criminal History Category of I., which is a Guideline range of
7 21 to 27 months.

8 Is there a -- have you reviewed it with your client
9 Mr. Rappaport?

10 **MR. RAPPAPORT:** I have, Your Honor.

11 **THE COURT:** And that's before any departures or
12 variances are employed?

13 **MR. RAPPAPORT:** Correct.

14 **THE COURT:** Okay.

15 So I understand, and I don't know whether the -- the
16 reason that the Court had some concern was because of a letter
17 it had received from counsel for --

18 **MS. CADET:** For Terry Kleid.

19 **THE COURT:** -- Terry Kleid.

20 And I think that it would be appropriate for the Court to
21 hear from counsel for Terry Kleid, if counsel wishes to address
22 the Court.

23 **MS. CADET:** That's fine with the Government, Your
24 Honor.

25 **THE COURT:** Okay. Yes, sir. Do you want to come

1 forward?

2 **MR. SCHATZ:** Yes.

3 **THE COURT:** And would you identify yourself, and
4 we'll take it from there.

5 **MR. SCHATZ:** I'm Joseph Schatz, Your Honor. Good
6 morning. I am the attorney for Terry Kleid in the civil matter
7 that's referred to in the letter that you received.

8 **THE COURT:** Yes.

9 Okay. So you are aware obviously of what the Court's view
10 is as to whether or not this is relevant conduct, but I want
11 to -- I want to give you the opportunity to say anything you
12 want to say in connection with the sentencing. Even though I
13 don't know that you are, quote, a victim of this offense, I
14 think that anything that you might want to bring to the Court's
15 attention, you should be permitted to do so.

16 And that's my view of sentencing. It may not be other
17 judges' view of sentencing, but it happens to be my view of
18 sentencing. So you may proceed.

19 **MR. SCHATZ:** Thank you very much, Your Honor. I very
20 much appreciate that opportunity.

21 The joint stipulation that counsel for the -- for
22 Defendant Brown and the prosecution filed states that:

23 "Relevant conduct includes all acts or omissions
24 of the defendants done to avoid detection for the
25 offense of conviction."

1 One of the things that was done is to move money from my
2 client's account and other victims' accounts into other
3 people's accounts that had money taken, including the HOAs for
4 which he has been charged.

5 So the reason that was done was to avoid or delay
6 detection as long as possible and, therefore, I think that the
7 other thefts that are mentioned in my letter can be used to
8 affect the Sentencing Guidelines.

9 In other words, it's not the case that they don't meet the
10 requirement since the money was moved around to plump up the
11 HOA accounts to avoid detection for as long as possible.

12 Second, the issue of restitution is relevant here because
13 it's mentioned in the joint statement that he made some
14 restitution, but the defendant has never said what he did with
15 the money that he took from everybody else. He's taken
16 approximately ten times the 230,000 mentioned in this
17 memorandum. And since money is fungible, it's odd-to say that
18 he should be given credit or more merciful treatment by the
19 Court for having made restitution.

20 As far as my client is concerned, he's made restitution,
21 to the extent that he's done it, with her money.

22 And then the last issue is the common purpose matter,
23 which is mentioned in the joint Sentencing Memorandum. I think
24 it's a mistake to treat Mr. Brown's theft from the HOA as
25 unique. His purpose was to steal money from everybody whose

1 property who he was managing, not just the HOA. He was
2 stealing money from rental property owners and other people.

3 As the Department of Real Estate found, he --

4 **MR. RAPPAPORT:** Your Honor, may I object. At this
5 point this is multiple layers of hearsay. And I understand
6 that he is an advocate and he has a position here. He is not a
7 victim. He has a position in this matter. He is advocating
8 for his client to obtain restitution.

9 **THE COURT:** Well --

10 **MR. RAPPAPORT:** In a real estate matter that is
11 separate and apart from the theft.

12 **THE COURT:** But he's making his argument. I'm
13 listening to his argument.

14 His argument is that he disagrees with the stipulation.
15 He thinks -- he thinks that -- his argument is that, number
16 one, she ought to be treated as a victim because her funds were
17 used to, one, avoid detection; and, two, to make, in part, the
18 restitution that the Court is considering in terms of the
19 overall 3553(a) factors. That's his argument. I understand
20 his argument.

21 And I'll get to you, Mr. Rappaport, as to how you want to
22 respond to the argument. But I think it's entirely appropriate
23 that he be permitted to state what his argument is. He simply
24 disagrees with the stipulation -- not simply. He disagrees
25 with the stipulation. He says it's not an accurate stipulation

1 as to the facts.

2 I think in a sentencing proceeding an individual does have
3 the right to come forward and maintain that they are a victim
4 and does have the right to say that the stipulation is
5 erroneous. I think, that's what sentencing hearings are about,
6 in part.

7 And so I don't -- I'm going to overrule your objection
8 right now, but, of course, when counsel is finished, I'll turn
9 to you and ask you what your position is.

10 That can be part of your position. I understand that.
11 But it doesn't -- it doesn't preclude counsel from making the
12 argument.

13 **MR. RAPPAPORT:** My argument was he's going far afield
14 here. He can address the issues that the Court --

15 **THE COURT:** I don't think he's going far afield.
16 He's saying -- I don't think he's going far afield. He's
17 saying what I just said he said. That seems to me directly on
18 point.

19 **MR. RAPPAPORT:** Yes. My objection was when he
20 started talking about the Bureau of Real Estate.

21 **THE COURT:** Oh, that I don't know. Oh, I see.

22 **MR. RAPPAPORT:** That is where I --

23 **THE COURT:** There is nothing in front of me about the
24 Department of Real Estate.

25 **MR. RAPPAPORT:** He mentioned it. That's where I

1 imposed my objection.

2 **THE COURT:** Okay. Well, then I understand that, and
3 I'll hear you at any length you wish to be heard.

4 Go ahead, sir.

5 **MR. SCHATZ:** If the Court would want to receive proof
6 of the findings of the Department of Real Estate or if any of
7 the other -- for example, a judgment in the civil case that I
8 mentioned in the letter, in the *Stanway* case, where defendant
9 Brown has been found liable for the theft of \$200,000, I would
10 be happy to provide it.

11 I can provide live witnesses, if the Court wants, on the
12 subject of whether money taken from some accounts was used to
13 plump up the HOA accounts to avoid detection. I'm happy to do
14 that, if the Court would want me to do it.

15 And those are the three areas of the stipulation that I
16 disagree with, Your Honor. And I appreciate the opportunity to
17 have been heard.

18 **THE COURT:** Okay. Thank you.

19 Mr. Rappaport.

20 **MR. RAPPAPORT:** Thank you.

21 Well, Mr. Schatz, with all due respect, is a very
22 competent counsel and he does have a position here, is that
23 there is a civil matter pending against Mr. Brown.

24 What Mr. Brown has done in prior civil matters for
25 purposes of settling other civil matters is not for this Court

1 to consider. It's a cost effective means of resolving
2 litigation. He has not been found liable here.

3 **THE COURT:** Well, so, what about his -- I thought in
4 listening to what he said he said there is a judgment that has
5 been rendered for \$200,000 against the defendant on
6 circumstances arising out of misappropriation of funds.

7 Is there a judgment?

8 **MR. RAPPAPORT:** It's just a resolution --

9 **THE COURT:** Well, a judgment is a resolution. A lot
10 of things is a resolution. I'm just trying to figure out
11 what -- he said a judgment. Is there a judgment? I mean,
12 that's a different situation than a settlement.

13 **MR. SCHATZ:** Yes, Your Honor. There has been a
14 judgment. It was filed --

15 **THE COURT:** Do you have a copy of the judgment?

16 **MR. SCHATZ:** I don't have it with me. I mentioned it
17 in the letter, and I cited the superior court case number. I
18 had been told that I would be lucky to be heard at all, so I
19 didn't bring all of that with me. But I would be happy to
20 provide that judgment.

21 **THE COURT:** What is the judgment?

22 **MR. SCHATZ:** The judgment is for -- it was for
23 200,000-odd -- actually, it was for \$200,000 exactly, stolen
24 from a woman named Nancy Karen Daly Stanway in exactly the
25 manner that he took money from my client, Ms. Kleid, and also

1 from the HOA. He just embezzled it from her accounts.

2 And the plaintiff in that case, Stanway, who was
3 represented by the Cotchett firm, obtained judgment by summary
4 judgment motion in San Francisco Superior Court.

5 My case has been stayed for the last two years at the
6 request of Defendant Brown to prevent me from going forward.
7 Otherwise, we would probably have a judgment, too.

8 **THE COURT:** What can you tell the Court about the
9 judgment?

10 **MR. RAPPAPORT:** I was not his counsel. My
11 understanding is -- and this is why we're going far afield, is
12 there was a stipulated judgment. There was no jury. There was
13 no court trial. It was a stipulated judgment to resolve a
14 separate and unrelated real estate venture like Ms. Kleid's
15 here. That is what I understand.

16 There was no finding of malfeasance. It was a resolution
17 of a civil matter. Totally wholly outside of this Court's
18 purview for purposes of sentencing. It's a civil matter.

19 **THE COURT:** Not having seen the judgment, I don't
20 know what it is. It's a stipulated judgment. It just says: I
21 owe this money. I owe this money to you.

22 I mean, that's -- I mean, that is sort of neither here nor
23 there, is it? If it's a judgment in which there is a
24 recitation or a finding, a recitation of fraud or malfeasance
25 or something of that nature, then I think that that's a

1 different story.

2 If it's simply, I owe you \$200,000 and, yes, that's the
3 judgment, then that is the judgment. I don't know that it's
4 anything more than that.

5 **MR. RAPPAPORT:** My understanding is -- and, again,
6 it's based on information and belief. It was a resolution of a
7 civil matter; there were no adverse findings here. It was
8 simply a settlement of the civil -- of a real estate venture.

9 **MR. SCHATZ:** Your Honor --

10 **MR. RAPPAPORT:** Suffice it to say that I don't want
11 to get into this because this isn't an area where -- that we
12 should be addressing here before this Court.

13 Mr. Schatz has made his statement on behalf of his client.
14 The Government and I are both far more familiar with the facts
15 of this case than Mr. Schatz. We are far more familiar with
16 the law as it relates to the relevant conduct here in this
17 case.

18 Now, while he has an axe to grind and would certainly like
19 his client to receive restitution through the Government, the
20 fact is that he has filed a civil suit and that suit --

21 **THE COURT:** I don't know that I -- number one, I
22 don't -- well, he makes the argument that his client is a
23 victim. That's the argument. Because her funds were used to
24 effectuate some restitution in the case.

25 Let's assume, just for the moment, that's true. If that

1 were true, why wouldn't his client be entitled to restitution?
2 If that's true? If his client -- his client's money was used
3 to effectuate restitution, why wouldn't that be -- why wouldn't
4 that be --

5 **MR. RAPPAPORT:** He would qualify as a victim.

6 **THE COURT:** Pardon?

7 **MR. RAPPAPORT:** He would qualify as a victim, yes.

8 **THE COURT:** Yes. So that's what he's saying.

9 **MR. RAPPAPORT:** And I appreciate his statements.

10 **THE COURT:** But there is no -- it's an allegation.
11 I don't -- I mean, I think your argument basically is these are
12 all allegations, and the Court doesn't have the evidence in
13 front of it to make those determinations. They are
14 allegations.

15 And as a matter of fact, with respect to his client, it's
16 in the -- the litigation has been stayed or pending. It hasn't
17 achieved a resolution. And based upon that, I'm not going to
18 consider it because they are basically allegations.

19 But I think technically, legally he's correct that if, in
20 fact, the money was used for purposes of -- well, I know what I
21 might do. I know what I might do. I know exactly what I'm
22 going to do.

23 Which is, as to restitution, I'm going to continue a
24 restitution hearing, that part of the sentencing, for a
25 particular period of time and permit counsel to present any

1 evidence he has that his client -- that his client qualifies as
2 a victim for purposes of restitution.

3 **MR. SCHATZ:** Thank you, Your Honor.

4 **THE COURT:** You may not be able to do so, but that's
5 the fair thing. I'm here to do the fair thing, not what the
6 lawyers think is a fair thing.

7 Anyway, thank you. You can be seated. That's how I know
8 going to take that into account.

9 So I'm not taking it into account for purposes of the loss
10 calculation, and I'm not taking it into account for purposes of
11 the 3553(a) other factors because they are -- but I am going to
12 permit counsel to participate in the restitution hearing, which
13 will take place within 90 days.

14 **MR. SCHATZ:** Thank you, Your Honor.

15 **THE COURT:** And we'll set the date before you leave.

16 **MR. SCHATZ:** Thank you, Your Honor.

17 **THE COURT:** All right. So let me get back to
18 sentencing. All right. Let me get back to that aspect of the
19 sentencing.

20 So the objections to the Presentence Report,
21 Mr. Rappaport?

22 **MR. RAPPAPORT:** None on behalf of defense.

23 **THE COURT:** The Government? The Government objects
24 to the inclusion of the departure and variance noted in Part F.

25 Well, you're right. In other words, it does -- well, no.

1 I think you're wrong. It certainly -- you say two things. It
2 doesn't warrant a departure.

3 **MS. CADET:** Yes, Your Honor.

4 **THE COURT:** You're correct. It does not warrant a
5 departure.

6 Does it warrant a variance? It could. Saying it could.

7 The interesting thing is that if -- that if in looking at
8 it from a point of view of a variance, on that basis, if I did
9 take it into account, it would put the defendant in a
10 different -- if I gave him complete credit for it, it would put
11 him in a different Adjusted Offense Level.

12 Because if you netted it out, it would be less than
13 150,000. And if you did that, it would be down two points.
14 And the Guideline range instead of being 21 to 20 -- whatever
15 it is, 27 months, would be --

16 **MR. RAPPAPORT:** Just for the Court's edification,
17 both the Government and Defense have agreed that the loss is to
18 be used -- the loss of \$230,000 is to be used for Guideline
19 calculations here, but not for the restitution, separate and
20 apart from Terry Kleid's issue.

21 **THE COURT:** Well, but is there an agreement with
22 respect to whether it can be considered for purposes of a
23 variance?

24 **MR. RAPPAPORT:** No.

25 **THE COURT:** There is no mention of that.

1 **MR. RAPPAPORT:** There was no mention of that. That's
2 correct.

3 **THE COURT:** So in other words, instead of Adjusted
4 Offense Level -- what do we have, 16.

5 **MR. RAPPAPORT:** Sixteen.

6 **THE COURT:** It would be 14, and the range would be 15
7 to 21 months instead of 21 to 27.

8 **MS. CADET:** The parties did agree upon the --

9 **THE COURT:** Sorry?

10 **MS. CADET:** The parties did agree upon the Guidelines
11 calculations as set forth in the Plea Agreement and that did
12 not involve a variance.

13 **MR. RAPPAPORT:** That's correct. That's what I was
14 telling the Court, is that --

15 **THE COURT:** I know it didn't involve a variance, but
16 a variance is not a Guideline calculation.

17 A variance is once the Guideline calculation is achieved,
18 whether or not you then vary from the Guidelines. That's why
19 the word "variance" is there.

20 **MR. RAPPAPORT:** Yes.

21 **MS. CADET:** Yes, Your Honor.

22 **THE COURT:** And there is no discussion of that.

23 **MR. RAPPAPORT:** Correct.

24 **MS. CADET:** Correct.

25 **THE COURT:** Okay. All right. Now, let me tell you

1 what I -- I've spent a lot of time on this, as you well know,
2 and it is my view that this case deserves a departure under
3 5H1.6., which, of course, neither party really raises directly.
4 But I think a departure is warranted.

5 And a departure under 5H1.6, as we all know, talks about
6 extraordinary family responsibilities and ties. And under
7 Application Note 1(b)(i) through small (iv), four, there are
8 four conditions for departure under this guideline. And I have
9 looked at those conditions, and I have looked at the
10 Presentence Report, and I have looked at the submissions of the
11 parties. I find that they are all satisfied. And, therefore,
12 I am going to -- I am going to depart on that basis.

13 So I don't think there needs to be an extended discussion,
14 having recognized what I think is the true essence of the
15 parties' position here. But, of course, I will hear any
16 further discussion that the parties want to make in connection
17 with sentencing.

18 **MR. RAPPAPORT:** May I ask what the Court's intended
19 resolution is?

20 **THE COURT:** That's a fair question. I intend to put
21 the defendant on probation. And I intend to -- as a condition
22 of probation, I am going to give him some period of confinement
23 in a halfway house or residential center. I am going to impose
24 additional conditions, such as home detention.

25 You know, sentencing is highly individualized. I think

1 for the reasons that the departure, 5H1.6, points out, that it
2 would have a devastating effect on his wife and on his family.

3 What he did was unforgivable, but it's -- it ought not be,
4 in my view, a terminal offense. I think it's much more
5 important that he be punished appropriately and make
6 restitution.

7 There are a number of victims, and we'll get to that, who
8 are deserving of having their money back. And I think that
9 that's a -- that's a course that in this particular case I
10 think ought to be followed. And I think, really, the
11 Government doesn't disagree with that.

12 **MS. CADET:** Your Honor, yes. The Government does not
13 challenge your end goal.

14 I do have a question in terms of how we characterize how
15 the Court gets there. I would note that the Plea Agreement
16 provides that the Defense would not request a downward
17 departure, but that they may seek a downward variance.

18 And so I'm wondering to the extent that the parties have
19 agreed to an Adjusted Offense Level of 16, is there a way that
20 we can move forward with the Guidelines as agreed to by the
21 parties and as found by Probation?

22 **THE COURT:** I need to look at the Plea Agreement. Do
23 we have the Plea Agreement? Somebody hand up the Plea
24 Agreement to me.

25 **MS. CADET:** Sure.

1 (Whereupon document was tendered to the Court.)

2 **MS. CADET:** So the parties agreed to an Adjusted
3 Offense Level of 16.

4 **THE COURT:** They did.

5 **MS. CADET:** And it appears that that's what Probation
6 suggested as well.

7 So the Government would suggest that the Guidelines be
8 calculated in that way and that the -- the ultimate decision
9 that the Court wants to make, if it can be done with respect to
10 a variance, which is what the parties have agreed.

11 **THE COURT:** That's what the parties suggest.

12 **MS. CADET:** Right.

13 **THE COURT:** Well, I disagree. The parties -- this is
14 a (b) plea. I'm not bound by what the parties say.

15 And the proper language in the Plea Agreement should have
16 been, in my view, that the Defense can request a departure
17 under 5H1 and the Government could object. That's the way to
18 do it. This is -- this would just be a subterfuge using a
19 different word called "variance" instead of "departure." It
20 would be a subterfuge. It wouldn't fool anybody. It certainly
21 wouldn't fool the Sentencing Commission, and it's not fooling
22 me. Because the right term is "departure." It's right in the
23 Guidelines.

24 **MS. CADET:** Understood, Your Honor.

25 **THE COURT:** Okay. Anything else?

1 **MR. RAPPAPORT:** No, Your Honor.

2 **THE COURT:** Do you want to address the Court? You
3 can, if you wish.

4 **THE DEFENDANT:** Thank you, Your Honor.

5 Umm, I -- I just want to say before I leave that I promise
6 that I will make full restitution and that going -- you know,
7 and that I've -- I don't know how to say this. But I promise I
8 will make full restitution, and I thank you for caring about my
9 family, and I'm --

10 **THE COURT:** I do think you owe apology to all the
11 victims.

12 **THE DEFENDANT:** Excuse me?

13 **THE COURT:** I think you owe an apology to all the
14 victims.

15 **THE DEFENDANT:** Well, of course. I have a statement,
16 but I wasn't sure --

17 **THE COURT:** I think you should read it.

18 **THE DEFENDANT:** I wrote this out.

19 Even without reading the victim impact statements, I
20 understood how I had hurt people financially and, more
21 important, how I had breached their trust. But when I read the
22 statements what I had understood intellectually, I now felt
23 emotionally.

24 Going forward I may not be able to restore their trust,
25 but I can make restitution. I understand that this is part of

1 my legal requirement, but I am making a commitment in the
2 courtroom that I will not leave this world without making it
3 right to the homeowners associations and to my wife, who I've
4 hurt far worse than myself.

5 Umm, I'm not going to go into the -- okay. I have had
6 discussions with my therapist, my rabbi, my wife and friends,
7 and I would like to realize the factors which made me do wrong
8 and hurt people. I realized I did not want my wife to suffer
9 any more loss. She had been suffering from the death of our
10 son. I did not want her to worry about our financial future.
11 Ironically I have made it worse, and it all happened anyway.

12 I am -- and I now -- I just turned 70 last month. And as
13 I head off into what I call my sunset years, I reiterate that I
14 wish to have the opportunity to make it right to all the
15 victims and that any way I can say that I'm so sorry for my
16 actions; that, you know, I hurt people. I didn't want to hurt
17 people. I never wanted to hurt people. I've always tried to
18 help. And I lost my way. And I'm so sorry.

19 **THE COURT:** Okay. Thank you.

20 So as indicated, pursuant to the Sentencing Reform Act of
21 1984 it is the judgment of the Court that Steven Brown is
22 hereby placed on Probation for a period of five years.

23 While on probation you shall not commit another federal,
24 state or local crime. Shall comply with the standard
25 conditions that have been adopted by this Court. The drug

1 condition is waived. And you shall comply with the following
2 special conditions.

3 One --

4 **MR. RAPPAPORT:** Judge, may we take a time out. I
5 think his wife is having a medical problem.

6 **THE COURT:** Oh. Oh, my.

7 **MR. RAPPAPORT:** Can we call somebody?

8 **THE COURT:** Go ahead. We're in recess. Please
9 address her.

10 (Brief pause.)

11 **THE COURT:** Okay. Back on the record. Would you
12 want to proceed, Mr. Brown? Do you want to proceed?

13 **THE DEFENDANT:** Yes.

14 **THE COURT:** You want to proceed with the sentencing?

15 **THE DEFENDANT:** Yes.

16 **THE COURT:** Okay. So as a condition of Probation,
17 you must reside for a period of 30 days in a halfway house or
18 residential re-entry center and shall observe the rulings of
19 that facility.

20 You must participate in a location monitoring program as
21 directed by the Probation Officer for a period of 11 months and
22 be monitored by location monitoring technology at the
23 discretion of the Probation Officer. Location monitoring is to
24 commence after the service of the 30 days in a halfway house.

25 Location monitoring must be utilized to verify your

1 compliance with the curfew while on the program. You are
2 restricted to your residence every day between the hours set by
3 the Probation Officer. You must pay part or all the costs of
4 the program based on your ability to pay, as determined by the
5 Probation Officer.

6 You must not maintain a position of fiduciary capacity
7 without the prior permission of the Probation Officer.

8 You must pay any restitution and special assessment that
9 is imposed by this judgment and remains unpaid at the
10 commencement of the term of probation.

11 You must not open any new lines of credit or incur any new
12 debt without the prior permission of the Probation Officer.

13 You must provide the Probation Officer with access to any
14 financial information, including tax returns, and shall
15 authorize the Probation Officer to conduct credit checks and
16 obtain copies of income tax returns.

17 I'm not going to direct the mental health treatment
18 program.

19 You must submit your person, residence, office, vehicle or
20 electronic devices and their data, including cell phones,
21 computers and electronic storage media or any property under
22 your control to a search. Such a search shall be conducted by
23 a U.S. Probation Officer or any federal, state or local law
24 enforcement officer at any time with or without suspicion.
25 Failure to submit to such a search may be grounds for

1 revocation. You must warn any residents that the premises
2 maybe subject to searches.

3 You must cooperate in the collection of DNA as directed by
4 the Probation Officer.

5 It is further ordered that you shall pay to the United
6 States a special assessment of \$100. Payment shall be made to
7 the Clerk of U.S. District Court, 450 Golden Gate Avenue, Box
8 36060, San Francisco, California 94102. That amount is due
9 immediately.

10 The Court finds that the defendant does not have the
11 ability to pay a fine and orders that it be waived.

12 It is further ordered that the defendant shall pay
13 restitution. The amount of restitution and the victims shall
14 be determined within the next 90 days, either by way of
15 stipulation or by hearing.

16 Obviously, as I've indicated to counsel for Terry Kleid,
17 that he shall be permitted to participate in a restitution
18 hearing and be heard in that hearing as to whether or not his
19 client is -- can be appropriately considered a victim of the
20 criminal offense and whether, if so, how much restitution shall
21 be ordered in her favor.

22 A restitution hearing is to occur on -- let's do 90 days
23 out.

24 **MR. RAPPAPORT:** Do we want to just set a status date
25 about 30 days out?

1 Mr. Schatz can provide me with any and all documentation.
2 If he is correct, there is a very real possibility we will
3 agree. I don't believe he is correct. If not, then we can set
4 a hearing.

5 **THE COURT:** Let's set a status. That's a very good
6 idea. Let's set a status.

7 **THE CLERK:** December 18th at 1:30.

8 **MR. RAPPAPORT:** Yes. I have a matter in front of
9 Judge Chen at 2:30.

10 **THE COURT:** You'll be free.

11 **MR. RAPPAPORT:** Okay. 1:30 it is.

12 **THE COURT:** Next door.

13 **MR. RAPPAPORT:** Does that work for you, sir?

14 **THE COURT:** December 18? Is that enough time, sir?

15 **MR. SCHATZ:** I think that -- if I heard you
16 correctly, you said December 18th? Is that what you said?

17 **THE COURT:** Yes. Is that all right?

18 **MR. SCHATZ:** Well, the matter has been stayed.

19 **THE COURT:** I'm not going to stay the restitution.
20 In other words, I'm going to order restitution and give you the
21 opportunity to make whatever argument you want to make with
22 respect to whether your client should be included as a
23 restitution victim.

24 **MR. SCHATZ:** But can we make that a little later than
25 December 18th? I'm thinking about January.

1 **THE COURT:** We can do it in January.

2 **MR. SCHATZ:** Maybe January or February.

3 **THE COURT:** Let's do it towards the end of January,
4 okay?

5 **MR. SCHATZ:** Okay.

6 **THE COURT:** I'm going to have the defendant
7 surrender -- well, he can voluntarily surrender. I'm not going
8 to do it until January and so forth over the holidays.

9 **THE CLERK:** January 22nd?

10 **THE COURT:** You are to surrender for placement in a
11 facility on or before -- how should we do this. He resides in
12 San Mateo.

13 **PROBATION OFFICER:** Your Honor, I have been informed
14 that there won't be bed space until approximately February. I
15 would say "report as directed by the Probation Office."

16 **THE COURT:** Yes. That will be the order.

17 So you will get an order, direction from the Probation
18 Office as to where to go and when to go. All right? But it
19 won't be until February of next year.

20 **THE DEFENDANT:** I understand.

21 **THE COURT:** Yes.

22 **MR. RAPPAPORT:** A date for status on the restitution?

23 **THE COURT:** Let's do it in January.

24 **THE CLERK:** January 22nd at 1:30.

25 **THE COURT:** Is that all right?

1 **MR. SCHATZ:** Yes, sir.

2 **MR. RAPPAPORT:** Just give me a second, please.

3 **THE COURT:** Thank you very much.

4 **MR. RAPPAPORT:** That would be fine.

5 **THE COURT:** Thank you.

6 **MS. CADET:** Fine with the Government.

7 **PROBATION OFFICER:** Thank you, Your Honor.

8 **MR. SCHATZ:** Thank you, Your Honor.

9 **THE COURT:** Okay. All done.

10 (Proceedings adjourned.)

CERTIFICATE OF OFFICIAL REPORTER

I certify that the foregoing is a correct transcript from
the record of proceedings in the above-entitled matter.

Debra L. Pas

Debra L. Pas, CSR 11916, CRR, RMR, RPR

Thursday, February 4, 2021